

Dispute Resolution in parish and town councils

A guide for Oxfordshire councils

prepared by Oxfordshire Association of Local Councils (OALC) and
endorsed by Oxfordshire Monitoring Officers

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1. Introduction

- 1.1 This guide has been produced to help councils handle internal grievances and difficult relationship issues between Members and Officers which can become time-consuming and costly problems for small organisations.
- 1.2 Tensions and strained relationships can arise in local councils due to different motivations or agendas, political differences, complexities of the Law, personality clashes or contentious local issues. Occasionally these issues become disputes between individuals and if the individuals include paid officers of the council they can quickly develop into employment disputes adversely affecting morale, productivity and leading to legal disputes which are costly, damaging to reputations and can impact on future retention and recruitment of staff.
- 1.3 It is recommended that by adopting good practice people management and dispute resolution processes the effectiveness of town and parish councils in the county can be enhanced. The dispute resolution process will enable the County Association (Oxfordshire Association of Local Councils) and the Monitoring Officers in the Oxfordshire principal authorities to provide clear, consistent and coordinated advice and guidance to councils which are encountering difficulties between Members and Officers and provide a means by which potential disputes can be resolved at an earlier opportunity, or even avoided all together.
- 1.4 Following the Ledbury case OALC have reviewed and altered this guidance to reflect the judgement <https://www.11kbw.com/wp-content/uploads/Harvey-Ledbury-final-TC-21052018.pdf>

2. Managing a dispute

- 2.1 It is likely that concerns about an issue between Members and Officers will be raised informally at first with a fellow Member or Officer. At this stage there is an opportunity to resolve the difficulties informally without escalating the issue to any kind of formal process. There is the expectation that the informal route will be attempted first.

3. The Informal route

- 3.1 Sometimes just talking through an issue with the people involved can allow parties to see the problem from the other person's point of view, or become aware of new facts or just apologise for something that was said or done if it has caused offence.
- 3.2 An approach which involves a third party to work through a dispute can be effective. Alternative Dispute Resolution includes mediation, conciliation or arbitration and allows the parties with a difficulty to come to together to talk about their differences and work towards a mutually agreed solution.
- 3.3 Advantages – no winner or loser, no blame, focus on building future relationships, more likely to retain experience within the organisation, fewer resources than hearing panels, can be quicker and easier to manage, can be applied at any stage of the dispute, OALC has an accredited resource
- 3.4 Disadvantages – an impartial third party ideally trained/accredited mediator needed, cost implications, requires parties to be committed to a resolution.

4. The Formal route

- 4.1 A concern or complaint raised by an employee related to that employee's employer is called a Grievance and the council must have a Grievance procedure to deal with such matters (Employment Rights Act 1996, s1) and Employment Act 2008 from which the ACAS Code of Practice is derived. An employee must put their grievance into writing to trigger the Grievance Procedure.
- 4.2 Upon receipt of a written employment Grievance the council must undertake:
- STEP 1 – **INVESTIGATION** – independent, in writing
- STEP 2 – **HEARING** – convene impartial panel, grant right to be accompanied, make a note of the hearing
- STEP 3 – **APPEAL** – if the outcome is appealed against: impartial panel, right to be accompanied, make a note of the meeting
- 4.3 *Note:* concerns raised by members of the public, contractors, suppliers should be directed through the council's Complaints Procedure, which is separate from the internal employment Grievance procedure. Concerns raised by Members about employees' performance or conduct should be directed to the council's Staffing Committee for further investigation and resolution through the council's performance management or disciplinary policies. Concerns raised by Members about other Members could benefit from mediation or may lead to a Code of Conduct complaint depending on the advice of the Monitoring Officer.

5. Remedies available to a parish & town council following an internal grievance process

5.1 A Grievance hearing panel of the council will conclude with a decision about whether to uphold the employment grievance and may recommend any of the following:

- Training or development opportunities for the aggrieved or others
- A review of terms and conditions
- A review of internal procedures or policies
- Mediation between the parties in dispute
- Disciplinary action against another employee (nb. a separate disciplinary process must follow, including the investigation stage)
- Reasonable measures to protect the aggrieved under the council's duty of care as an employer
- Onward referral under the Members Code of Conduct

6. The Code of Conduct

6.1 The Localism Act 2011 places a general obligation on councils (including town and parish) to "promote and maintain high standards of conduct by members and co-opted members of the authority" and to "adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity". There are seven principles of public office (sometimes referred to as the Nolan Principles from a Government enquiry in 1995) these are:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

6.2 The first part of the code sets out the behaviours and characteristics required of councillors. It is important to appreciate that the code applies when a councillor or co-opted member is acting in that role, and that it is their responsibility to comply with its provisions. The second part relates to registering and declaring interests.

6.3 Every elected or co-opted Member is subject to the provisions of the Code of Conduct.

6.4 Each Principal Authority in the county has in place arrangements for the handling of complaints which allege that a Member of the council, or of a parish council in the district, has failed to comply with their authority's code of conduct.

6.5 Each Principal authority will have adopted arrangements which:

- consider general matters relevant to member standards
- conduct any Committee hearings which take place where an alleged breach of the code has been the subject of an investigation which concludes that there was a failure to comply.

6.6 Complaints about Members must be submitted to the Monitoring Officer at the relevant Principal Authority. The Monitoring Officer can only consider complaints about the behaviour of a member and may appoint an investigating officer to consider the evidence and report back to the Monitoring Officer.

6.7 Members of the Council, and parish clerks will, as appropriate, be advised of matters considered by the relevant Principal Authority's adopted arrangements, and, where a Committee process is triggered, the papers for the meeting may be made available subject to the "exempt information" provisions of the Local Government Act 1972.

6.8 Only the relevant Committee of the Principal Authority or the monitoring officer acting under delegated authority has the power to censure or reprimand a Member, to recommend removal from a committee or other additional responsibilities including outside appointments, to recommend training, to recommend withdrawal of equipment or facilities, to exclude Members from premises (other than meeting rooms) but have no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

7. Managing internal Grievance and Code of Conduct complaints raised at the same time

7.1 The internal employment grievance will take precedence. This is because the council has a statutory and contractual duty to deal with the grievance and the council's grievance procedure has timelines which need to be observed. An internal grievance and a Code of Conduct complaint, although often based on the same evidence, will be considered against different criteria and against different thresholds, which is why it is good practice to keep them separate.

7.2 When a Monitoring Officer receives a Code of Conduct complaint raised by an officer about a Member's behaviour or from another Member or member of the public about alleged conduct against an officer, the Monitoring Officer is likely to place the complaint in abeyance until the grievance process (including appeal stage if required) is fully exhausted or may take the view that there is no public interest in pursuing the complaint. Thereafter the Monitoring Officer will examine the complaint alongside the

Grievance outcome and will decide whether it is in the public interest to continue with an investigation in the former case.

8. Preventative Measures

Actions a parish or town council can take to improve dispute resolution locally

- Adopt a Grievance process (OALC has provided the NALC version which is ACAS Code compliant as an appendix to this guide)
- Establish a Staffing or Personnel Committee with responsibility for handling employee relations (see model Terms of Reference in the appendices to this guide)
- Establish a Hearing Panel and Appeals Panel annually so that these are available should a dispute arise
- Train Members who sit on these committees/panels
- Hold annual performance reviews and encourage two-way dialogue with staff about their work
- Make available mediation for work relationship issues
- Adopt a Member: Officer protocol within which expectations of conduct is laid down for all parties (see model in the appendices)
- Adopt a policy on bullying and harassment in the workplace e.g. a Dignity at Work policy to which all parties sign up (see a model policy in the appendices)
- Train staff and Members on bullying so that they can identify the difference between robust people-management and bullying behaviour
- Train staff and Members on the Code of Conduct

9. Actions your County Association will take to improve dispute resolution locally

- Provide templates for written policies and processes including Grievance Procedure, Member: Officer Protocol, Dignity at Work policy, Staffing Committee Terms of Reference which are appendices to this guide.
- Ensure guidance is kept up-to-date
- Provide training on dispute resolution
- Provide advice to Members on handling an internal dispute
- Develop a team of trained Panel Members for Appeals (if a council is unable to provide an appeal panel due to Members having prior involvement in a dispute or being

themselves implicated). OALC will ask the smaller councils (5 councillors+) to develop a reciprocal arrangement with a neighbouring parish council to form a joint Independent Panel in place if the need arises. OALC may ask the Monitoring Officers to volunteer one person from each of their authorities to sit on the Independent Appeal Panel. Note: *this service may attract a fee for the Panel Members' time.*

- Provide an accredited mediator for councils to use for alternative dispute resolution. Note: *this service may attract a fee for the Mediator's time.*

10. Actions the Monitoring Officers will take to improve dispute resolution locally

- Agree to place in abeyance any Code of Conduct complaints which are also the subject of internal employment grievances until after the internal process has been exhausted (hearing and appeal) or they may take the view on preliminary assessment that there is no public interest in taking any further action with regard to the complaint.

Where any Code of Conduct complaint has been held in abeyance:

- Agree to consider any investigation report produced during the internal employment process as background information
- Recommend Alternative Dispute Resolution measures, if appropriate to the case being handled.
- Consider a request to provide a volunteer from their authority who is able and available to sit as a member of an Independent Appeal Panel to hear grievance appeals upon request from a parish or town council.

11. Summary

Upon the receipt of an employment grievance for which there is a parallel Code of Conduct complaint

12. Council

- 1) Investigate
- 2) Hear (including an appeal if raised)
- 3) Conclude with a decision and recommendations to council for implementation

Nb. At every stage – consider Alternative Dispute Resolution

Thereafter:

13. Monitoring Officer

- 4) Investigate (if the complaint has been held in abeyance and not already been the subject of a determination to take no further action)
- 5) Hear
- 6) Determine
- 7) If appropriate – Sanctions
- 8) If appropriate – other interventions

Nb. At every stage – consider Alternative Dispute Resolution

Background reading:

ACAS Code of Practice on Dispute Handling March (2015)

<http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>

Local Councils Explained, Meera Tharmarajah, National Association of Local Council (2013)